IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

Cr.R. No. 609 /2003.

APPLICANTS : 1. Bajrang Lal s/o Banwari Lal Jain, aged about 33 years.

2. Krishna Kumar s/o Banwari Lal Jain, aged about 30 years.

Both r/o village Main Road Raghunathnagar, Tehsil Wadrafnagar, Distt. Surguja, C.G.

(ACCUSED PERSONS)

4809/03

Filed on..... 11/12/03.....

by Shri.... A. K. Patel .....

..... Advocate

R to D.R. (J)

11/12/03

V E R S U S

NON-APPLICANTS : 1. Pawan Kumar Agrawal s/o Late Om Prakash Agrawal, age 45 years, r/o village Bhaiyathan Road, Surajpur, P.S. & Tehsil Surajpur, Distt. Surguja, C.G.

(COMPLAINANT)

2. The State of Chhattisgarh, through District Magistrate Surguja, Ambikapur, Chhattisgarh.

(PROSECUTION)

CRIMINAL REVISION U/S. 397/401 OF THE CODE OF CRIMINAL PROCEDURE.

(36)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Revision No. 609/2003

Applicants — **Bajrang Lal and another**

Vs.

Non-applicants — **Pawan Kumar Agrawal & another.**

Shri A.K.Prasad learned counsel for the applicants.
Shri R.Pradhan learned counsel for the respondent.

O R D E R

(Passed on 03 -05-2005)

Dhirendra Mishra,J.

The applicants have preferred this revision petition against the order dated 24-11-2003 passed by First Additional Sessions Judge, Surajpur in Criminal Revision No. 280/2003 by which the revision preferred by the non-applicant No.1 has been allowed and the order dated 23-09-2002 passed by Judicial Magistrate First Class, Surajpur in Criminal Case No. 20/2002 was rejected as premature.

2. The facts of the case giving arise to this revision are that a complaint under Section 138 of the Negotiable Instrument Act (for short 'the Act') was filed on the allegation that a cheque for a sum of Rs. 3 Lacs given by the applicant on 29-12-2001 was dishonored by the Bank whereupon the non-applicants served a notice on 28-06-2001 calling upon the applicants to make payment against the said cheque. Notice of demand was received

by the applicants on 09-07-2001. Non-applicant / complainant filed the criminal complaint on 24-07-2001 i.e. before the expiry of period of 15 days as envisaged under Section 138 read with Section 142 (a) of the Act.

3. Learned counsel relying on the judgment in the matter of **Saketh India Ltd. & others Vs. India Securities Ltd.** reported in **1999 SCC (Cri.) 329**, submits that the method of computation of period of 15 days is to be done by excluding the date on which the notice of demand was received by the drawer of the cheque and thereafter if the amount is not paid within 15 days then on 16th day cause of action arises to the drawer and accordingly it is submitted that if this test is applied on 24-07-2001, no cause of action was available to the non-applicant No. 1 to file the complaint and thus the complaint was premature. However, the learned Additional Sessions Judge erroneously held that the date of taking cognizance of the offence is the date when the trial Court recorded the statement of complainant under Section 200 of the Code of Criminal Procedure.

4. Learned counsel for the applicants relying upon the judgment on Bombay High Court in the matter of **Rakesh Nemkar Porwal Vs. Narayan Dhondu Joglekar and another** reported in **1993 Cri. Law Journal 680**, in the judgment of Andhra Pradesh High Court in the matter of **M/s Mahalaxmi Enterprises Calicut Kerala and another Vs. Sri Vishnu Trading Co. and another** reported in

AIR 1991 (A.P.) 74 and the judgment of Gujrat High Court in the matter of **Dave Pruthvishkumar Bhanu Prasad Vs. State of Gujrat and another** reported in **2000 (3) Crimes 334**, submits that the complaint was filed by non-applicant No. 1 before the expiry period of limitation and therefore the trial Court rightly held the criminal complaint to be premature as on the date of filing of complaint no cause of action was available to the complainant / non-applicant No. 1. In the above cited judgment it has been held that no offence is said to have been committed unless and until the period of 15 days as prescribed under sub clause (c) of Section 138 has in fact elapsed. A Court would therefore be barred in law from taking cognizance of a complaint in respect of such an offence, at any point of time prior to this. He further submits that point of time at which cognizance is taken however, is when the complaint is presented to the learned Magistrate. Thus in the present case complaint was presented on 24-07-2001 and applying the above test and the method of computation of period as held by the Apex Court in the matter of Saketh India (Supra), the complaint was admittedly premature as no cause of action arises to the complainant on the date when it was filed.

5. On the other hand learned counsel for the respondents relying on the judgment of Apex Court in the matter of **Narsingh Das Tapadia Vs. Goverdhan Das Partani and another** reported in **AIR 2000 SC 2946** submits that a complaint can not be dismissed as premature even if it is

filed before the expiry of period for notice as contemplated under Section 138 (c) of the Act. It is further argued by the complainant that sub clause (c) of Section 138 of the Act enables the Court to entertain a complaint and clause (b) of Section 142 of the Act prescribes a period within which the complaint can be filed from the date the cause of action arises under Clause (c) of the proviso to Section 138, and no period is prescribed before which the complaint can not be filed. Defending the impugned order learned counsel for non-applicant submits that the finding recorded to the effect that the cognizance of the offence shall be deemed to be taken by the judicial Magistrate on 24-08-2001, the date on which the preliminary evidence was recorded by Magistrate and accordingly the complaint was properly filed which could not be dismissed holding the same to be premature.

6. I have heard counsel for the parties.

7. In my considered opinion the judgment relied upon by me counsel for the applicants are no more a good law in view of the judgment of the Apex Court in the matter of Narsinghdas Tapadia (Supra) because in paragraph 8 and 10 of the said judgment the meaning of taking cognizance of an offence by the Magistrate has been interpreted to the effect that taking cognizance of an offence by the Court means the action taken by the Court initiating judicial proceedings against an offender in respect of the

offence regarding which the complaint has been filed. Mere presentation of the complaint in Court can not be held to mean that its cognizance has been taken by the Magistrate. If the complaint is found to be premature it can await maturity or can be returned to the complainant for filing the same later and its mere presentation at an early date can not necessarily render the complaint liable for dismissal or confers any right on the accused to absolve from the criminal liability for the offence. Referring to Section 190 of the Cr.P.C. it has been held that when on receiving the complaint the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding Sections in chapter XV of the Code of Criminal Procedure 1973, he is said to have taken cognizance of the offence within the meaning of Section 190 (1) (a) of the Cr.P.C.

8. Thus in the light of the judgment of the Apex Court in the matter of Narsinghdas (supra), I am of the opinion that the impugned order passed by the learned Sessions Judge reversing the finding of the trial Court and restoring the complaint to its original form is in accordance with law.

9. Consequently the revision fails and the same is dismissed.

10. In view of this order M.Cr.P. No. 816/2005 stands disposed of.

Sd/-
Dhirendra Mishra
Judge

Jyotishi